

Public Employee Bargaining: A Political Perspective

Clyde W. Summers†

Collective bargaining¹ in public employment is different from collective bargaining in private employment, for "government is not just another industry."² This proposition I consider self-evident,³ for in private employment collective bargaining is a process of private decisionmaking shaped primarily by market forces, while in public employment it is a process of governmental decisionmaking shaped ultimately by political forces.⁴ The introduction of collective bargaining in the private sector restructures the labor market, while in the public sector it also restructures the political processes.

However, it does not follow from the proposition that collective bargaining in the public and private sectors is different that col-

† Garver Professor of Law, Yale University.

1. The term "collective bargaining" is used here to describe the process of establishing terms and conditions of employment in a written agreement negotiated between the public employer and a union acting as exclusive representative of the employees in the bargaining unit. This process is to be distinguished from "consulting" or "meeting and conferring," which lacks one or more of the basic elements of collective bargaining: exclusive representation, negotiation, and written agreement. The criterion is not the terminology used by the legislature or the courts, but the process used by the parties. Thus, although a Minnesota statute used the term "meet and confer," the process occurring under it was in fact collective bargaining. See *Hetland v. Board of Educ.*, 295 Minn. 338, 207 N.W.2d 731 (1973). On the other hand, an Arizona court used the term "collective bargaining" to describe a process which was bare consultation. See *Board of Educ. v. Scottsdale Educ. Ass'n*, 17 Ariz. App. 504, 509 P.2d 578, 583 (1972), *vacated on other grounds*, 109 Ariz. 342, 509 P.2d 612 (1973).

2. H. WELLINGTON & R. WINTER, JR., *THE UNIONS AND THE CITIES* 202 (1971) [hereinafter cited as WELLINGTON & WINTER]. See Shaw & Clark, *The Practical Differences Between Public and Private Sector Collective Bargaining*, 19 U.C.L.A. L. REV. 867 (1972).

3. Admittedly, there are many others who emphasize the similarities between public and private bargaining and who would solve problems in the public sector by analogizing to the private sector. See, e.g., CALIFORNIA ASSEMBLY ADVISORY COUNCIL ON PUBLIC EMPLOYEE RELATIONS, FINAL REPORT (1973); Edwards, *The Emerging Duty To Bargain In The Public Sector*, 71 MICH. L. REV. 885 (1973); Kheel, *Strikes and Public Employment*, 67 MICH. L. REV. 931 (1969).

However, most of those who analogize to the private sector pattern generally acknowledge the need for some modifications, particularly with respect to the availability of the strike. See, e.g., Smith, *State and Local Advisory Reports on Public Employment Labor Legislation: A Comparative Analysis*, 67 MICH. L. REV. 891, 909 (1969).

4. See, e.g., Project, *Collective Bargaining and Politics In Public Employment*, 19 U.C.L.A. L. REV. 887, 1011-19 (1972) [hereinafter cited as Project]; Goldstein, *Book Review*, 22 BUFF. L. REV. 603, 604 (1973). ("In terms of public education, collective bargaining must be viewed as a method of educational decision making, with teachers viewed as a group competing for educational decision-making powers with such other groups as administrators, school boards, community leaders, parents, students, legislatures and, indeed, courts.")

Public Employee Bargaining: A Political Perspective

lective bargaining in the public sector is inappropriate or that practices in the private sector cannot be transplanted to the public sector. Collective bargaining in both sectors is a process for determining terms and conditions of employment and it might serve both the private and public decisionmaking processes equally well in similar, or even quite different, ways. What does follow from this proposition is that public sector bargaining must be examined as a part of the governmental process.⁵ The appropriateness of collective bargaining practices in the public sector cannot be judged by analogies to the private sector but only by inquiries into how those practices fit within and affect the decisionmaking processes of government.

Proceeding from this premise, my purpose here is to try to analyze public employee bargaining from a political perspective, to focus on it as a part of the political process through which decisions concerning terms and conditions of employment for governmental employees are made.⁶ The analysis is limited to collective bargaining in local governmental units, in part because that is where public employee bargaining is most prevalent, but more importantly because its role in the governmental process at the state and federal level may be quite different and may require separate analysis.

My hope is that the analysis presented here may enable us to see more clearly the special role of collective bargaining in public employment and to evaluate more accurately its contributions and its dangers. The political perspective may also provide helpful guides in working out subsidiary problems in public employee bargaining, such as allocating authority to negotiate and conclude agreements on behalf of the public employer, determining the appropriate bargaining units, defining the subjects for bargaining, and prescribing the publicity to be given to the bargaining process. The last section of this article will attempt to project from the political perspective some guides as to how we should deal with these problems.

The political perspective may also sharpen our focus on the appropriateness of the strike and other methods of resolving bargaining impasses. Exploration of these problems, however, would re-

5. See, e.g., R. HORTON, *MUNICIPAL LABOR RELATIONS IN NEW YORK CITY: LESSONS OF THE LINDSAY-WAGNER YEARS* 3 (1973); Cook, *Public Employee Bargaining in New York City*, 9 *IND. REL.* 249, 267 (1970). ("Municipal labor relations is the political process by which the rules of the personnel system are determined.")

6. For a quite different attempt to view public employee bargaining from a political perspective, see Love & Sulzner, *Political Implications of Public Employee Bargaining*, 11 *IND. REL.* 18 (1972).

quire extended analysis and factual inquiry beyond the limitations of this article. Our central concern here is how collective bargaining, as a method of decisionmaking, alters the governmental process. That change is structurally the same whether the strike is available or not as a pressure device within that process. Although a strike may affect the substantive outcome, it does not set aside the process. Because our concern here is with the process, our analysis is limited to the operation of collective bargaining itself, without resort to strikes. The impact of strikes can be better discussed separately, after the political perspective has been developed to provide a basic framework.

Viewing public employee bargaining from the political perspective gives no guarantee of simple or secure answers—quite the contrary. Decisionmaking in government, even at the local level, is a highly complex process in which a variety of procedures, structures, and pressures interact in countless permutations to produce a decision. It is less principled than pragmatic, less an orderly system than a patchwork of processes. This is particularly true of budget-making and budget considerations dominate the form and substance of public sector bargaining in local government.

Because of the complexity of the political process, the analysis here can be only tentative, a preliminary attempt to explain how collective bargaining can and does fit within that process. The accuracy of those explanations cannot be tested by logic, but only by empirical evidence of the operation of collective bargaining in the political process. Such empirical evidence, however, has not been systematically collected, largely because the relevant questions have not been asked. Many of the conclusions stated here can be little more than hypotheses supported as yet only by intuition, unsystematic information, and limited experience. My primary purpose is to present a framework which will better enable us to consider the problems of public employee bargaining, lead us to ask more of the right questions, and help us to identify empirical research needed to reach responsible conclusions.

I. Basic Characteristics of Public Employment

Before attempting to analyze how collective bargaining fits within the political process, it is essential to articulate certain basic characteristics of public employment and the process for deciding terms and conditions of employment. These characteristics are present

Public Employee Bargaining: A Political Perspective

whether there is collective bargaining or not. All are obvious, but too easily overlooked.

First, decisions as to terms and conditions of employment for public employees are governmental decisions made through the political process. Market forces influence those decisions by determining the availability of workers to fill public jobs, by affecting the value placed on public services by voters and their elected officials, and by altering the willingness or ability of taxpayers to pay for those services. But the influence of market forces is filtered through the political process, where they conjoin with noneconomic forces and considerations to produce a political decision. The decision is responsive not only to economic but also to political forces and this is true whether terms and conditions of employment are declared unilaterally by public officials or determined bilaterally by collective agreement. Although collective bargaining requires new structures and procedures and may lead to different substantive results, the decisionmaking process nevertheless remains political.

Second, in public employment the employer is the public—in ultimate political terms, the voters to whom the public officials are responsible. The voters, however, consist largely of two overlapping groups whose interests differ: first, those who use the employees' services and, second, those who pay for those services through taxes. The public employer, when seen not as an abstraction but as a collectivity of individuals, is made up of purchasers and users of the employees' services. Members of the public, as purchasers and users, are motivated by economic considerations; they want to maximize services and minimize costs. The public employees' interest in lighter work load and higher wages conflicts with their employers' interest in more service and lower taxes.⁷ As in private employment, the economic interests of the employer and his employees are adverse. This opposition of economic interests between the public employer and public employee is present regardless of whether there is collective bargaining.

Third, the voters who share the employers' economic interests far outnumber those who share the employees' economic interest. Almost every voter uses, in one way or another, the services of

7. The public employee, if he is a resident of the local governmental unit, is also a taxpayer and a user of public services. However, his gain in higher wages or reduced work load presumably so outweighs his costs in increased taxes and reduced services that his voting behavior as an employee will be little influenced by his opposing interests as a taxpayer and a user.

public employees and almost every voter also pays for those services through taxes, directly or indirectly. Public employees of a governmental unit and their families make up only a small proportion of the voting population in that governmental unit—substantially less than 10 percent. At the local level some public employees are not residents and cannot vote in the governmental unit by which they are employed. This does not mean that public employees are politically helpless, but it does mean that, to the extent people vote their pocketbooks, public employees are at a significant disadvantage when their terms and conditions of employment are decided through a process responsive to majority will.

Fourth, public employees, even without collective bargaining, can and normally do participate in determining the terms and conditions of employment. Many can vote and all can support candidates,⁸ organize pressure groups, and present arguments in the public forum. Because their terms and conditions of employment are decided through the political process, they have the right as citizens to participate in those decisions which affect their employment. Such a right is not enjoyed by employees in the private sector. That participation can be meaningful and effective in obtaining better wages, shorter hours, and many other benefits, as the experience of many public employee organizations demonstrates.⁹ In part, this is because people do not always vote their pocketbooks; appeals to fairness or altruism can influence political decisionmaking.¹⁰

From these four characteristics of public employment there emerges more clearly the central significance of public employee bargaining. Introduction of collective bargaining into the public sector alters the governmental process, creating within that process special procedures for making decisions about the wages and working conditions the public will give its employees. This is, of course, no argument against public employee bargaining, unless there is some predisposition against innovations in government. There is no immediately evident reason for assuming that customary or preexisting processes

8. Subject to limitations on partisan political activities imposed by "little Hatch Acts" in some states. See Project, *supra* note 4, at 934-46.

9. See *id.* at 927-29, 931-33.

10. In St. Louis, the voters in a referendum approved by a 64.7 percent majority a firemen's pay increase which would give them parity with the police. In Los Angeles, the voters approved increased retirement benefits for policemen and firemen. This "lobbying with the people" by referendum and direct appeal to voters whose economic interests are adverse is one of the most common of all political actions pursued by public employees. See S. SPERO & J. CAPOZZOLA, *THE URBAN COMMUNITY AND ITS UNIONIZED BUREAUCRACY* 102-03 (1973); Project, *supra* note 4, at 930-33.

Public Employee Bargaining: A Political Perspective

are best, or even adequate, when the decision to be made by the public is the special one of how much the public will pay its servants. On the contrary, the fact that the economic interests of the voting public, both as taxpayers and as users of public services, run directly counter to the economic interests of public employees in wages and working conditions suggests that public employees may need special procedures to insure that their interests receive adequate consideration in the political process.¹¹

Clear recognition that public employee bargaining alters the political process helps us frame what I believe is the central question: How can the political process best be structured for determining the terms and conditions of public employment? The issue is not whether bargaining in the public sector is like bargaining in the private sector, or whether the practices of private sector bargaining can be transplanted to the public sector, but rather what practices in the public sector will improve the political process.

I do not mean to suggest that our experience with private bargaining is irrelevant. That experience gives us some understanding of the dynamics of the bargaining process and some guide as to how the parties will behave, for many of those actively involved, both on the union and employer sides, view the process from the perspective of the private sector and carry with them into the public sector the patterns of conduct learned in the private sector.¹² At the same time, our experience has shown us the nearly infinite variations collective bargaining may take in adapting to special settings and should remind us that bargaining must likewise be adapted to the special setting of the public sector. We may indeed find among the many variants of collective bargaining suggestive solutions to special problems. But however relevant this private sector experience may be, the central question remains: How can the political process best be structured for mediating the adverse interests of the voting public and its employees? Collective bargaining should be evaluated in terms of its impact on and contribution to that political process.

11. For a discussion concluding that the public's failure to be even fundamentally fair with its employees has caused numerous strikes, see Taylor, *Public Employment: Strikes or Procedures*, 20 IND. & LAB. REL. REV. 617, 628-29 (1967).

12. Many of the unions representing public employees are primarily private sector unions which have undertaken representation in the public sector. See J. STIEBER, *PUBLIC EMPLOYEE UNIONISM: STRUCTURE, GROWTH, POLICY* 3-6 (1973). Even all-public sector unions, such as the American Federation of State, County, and Municipal Employees, are heavily staffed by people drawn from private sector unions. See *id.* at 34-36.

II. Collective Bargaining and Budget-Making: A Simple Model and a Variation

An analysis of how collective bargaining alters the political process should begin with an examination of the budget-making process, for this is where public employee bargaining has its primary impact. The union's major demands at the bargaining table in most negotiations are either for increased benefits or reduced work burdens. The public employer's response to those demands is in terms of their increased budget costs. Whatever accommodation is reached becomes binding on the budget.¹³

A. *General Wage Increase*

For the purpose of comparing budget-making with and without collective bargaining, we can begin with the relatively simple model in which a city decides how much of an across-the-board wage increase to grant its employees, treating those employees as a unified group. Although wages are only one term of employment, and employees are seldom a completely unified group, this model provides a framework for analysis of other more complex situations.

Budget-making for a city, behind its facade of rationality, is a complicated political bargaining process in which various interest groups seek to have larger shares of the budget allocated for particular purposes.¹⁴ One group presses for more money for police protection, while another presses for more money for education. One group complains that not enough has been allocated for snow removal, while another complains that not enough has been allocated for garbage removal. One group wants more money for playgrounds and another wants money for a public golf course. The share of the budget allocated as a consequence of the efforts of each group depends on its persuasiveness and its political bargaining power, both

13. The fact that no money is available in the budget is no excuse for failure to honor the agreement. *See Tate v. Antosh*, 3 Pa. Cmwlth. 144, 281 A.2d 192 (1971). As a county court in Delaware said, the time for "trade offs" is "before and during bargaining, not after a solemn agreement has been made." *Delaware v. Local 1276, AFSCME, BNA 1973 GOV'T EMPLOYEE REL. REP. NO. 485*, at B-7 (Del. Ch. 1972). A judge in Wayne County, Michigan, sentenced the county commissioners to jail for refusing to pay wage increases negotiated the preceding year, *see* annotation in *BNA 1973 GOV'T EMPLOYEE REL. REP. NO. 485*, at B-17.

14. For a description of budgeting as a political process, see T. ANTON, *THE POLITICS OF STATE EXPENDITURES IN ILLINOIS* (1966); A. MELTSNER, *THE POLITICS OF CITY REVENUE* (1971). Most descriptions of the budget process treat it as an essentially administrative function performed according to objective rules and standards. This facade serves the interests of administrators who want to maximize their control and also of politically responsible officials who want to insulate themselves from the competing demands.

Public Employee Bargaining: A Political Perspective

with respect to politically responsible public officials and other interest groups. There is a second interrelated bargaining process concerning the size of the budget which pits those who want increased services against those who oppose higher taxes.¹⁵ However, many of those who seek larger allocations for particular purposes resist increases in the total budget, especially any increases beyond those necessary to pay for their own priorities.¹⁶ This sharpens the contest among the interest groups for shares in a budget which is insufficient to meet all of their demands.¹⁷ The budget is ultimately a political document summarizing a complex accommodation of these multiple competing and overlapping interest groups.¹⁸

Within this budget-making process public employees constitute one interest group. In the absence of collective bargaining they are customarily an organized group playing an active role in the process much the same as other interest groups. They issue public statements to win public support, appear at budget hearings to present their case, make informal presentations to public officials, and promise to give or withhold political support. They participate in the political process as one among many interest groups. Their budget

15. From the economists' viewpoint, the size of the budget should be determined by weighing the satisfaction of the last dollar of expenditure against the pain of the last dollar of taxes. The purposes for which the expenditures are made should be determined by weighing the satisfaction of the last dollar spent for one purpose against the last dollar spent for another. See Martin, *An Economic Criterion for State and City Budget Making*, 24 PUB. AD. REV. 1, 3-4 (1964).

The calculus of the political official is much the same, but satisfaction and pain are measured in terms of who is satisfied and who is pained and how this will affect the election returns. Bargaining and trade-offs lead to utility maximizing, but utility is measured by voter response. See Haeefele, *A Utility Theory of Representative Government*, 61 AM. ECON. REV. 350 (1971); McKean, *The Unseen Hand in Government*, 55 AM. ECON. REV. 496 (1965).

16. For a discussion of the tendency of voters to split their fiscal decisionmaking into two parts, one on spending and the other on taxes, with an imperfect bridge between the two, see J. BUCHANAN, *PUBLIC FINANCE IN DEMOCRATIC PROCESS* 88-98 (1967). In terms of pressure group activity, a single individual adds to the weight of both groups and exerts pressure twice, once on behalf of more services and once against higher taxes. Both of these pressures run against employees whose demand for higher wages threatens to reduce services or increase taxes, or both.

17. This description of the political process in making taxing and expenditure decisions is highly simplified, ignoring a number of variables which affect the ultimate decisions. See J. BUCHANAN, *supra* note 16; R. MUSGRAVE, *THE THEORY OF PUBLIC FINANCE* 116-35 (1957). These variables, however, do not change the basic pattern of political pressures described here, although consideration of them can give us a more complete understanding of how certain fiscal institutions and policies may aggravate or alleviate problems arising out of collective bargaining.

18. The political accommodation function is obscured by incremental budgeting in which the starting point for each department is a fixed percentage increase over the preceding year. However, the preceding budget was an accommodation of the interests at that time and increases or decreases which deviate from the norm represent changes necessary to make a new accommodation of the competing interests at the time of the new budget. Part of that new accommodation will be corrections for miscalculations made the preceding year as reflected in pressures felt in the interim.

share depends upon their ability to bargain in competition with the other interest groups.

Collective bargaining significantly changes the role of public employees in the budget-making process, providing them with a special procedure through which they can participate which is not available to other interest groups. The first crucial change is that, following the pattern of the private sector, the majority union becomes the exclusive representative of all employees in the bargaining unit. It becomes the official spokesman, speaking with a single authoritative voice for all employees. Dissonance or indifference in the employee group is submerged, giving the employees' voice increased clarity and force.

The second, and more crucial, change is that a responsible public official must bargain in good faith until either an agreement or impasse is reached. This means that a public official representing the city must deal with the union face-to-face, and at length. Granting an interview, listening to a presentation, or even engaging in discussion—the normal courtesy given by public officials to other interest groups—is not enough. When the union presents its demands, the public official or his representative must respond, not with evasive ambiguities or noncommittal generalities, but with hard answers. He must give reasons, support them with facts, and expose his position to extended argument on each point. Ultimately, he may be required to submit the proposed budget to critical examination, justifying the priorities implicit in its size and allocation. All of this must be done in a confrontation setting of face-to-face interchange. Thus, the bargaining table provides public employees with an official forum and a specially effective process for persuading public officials in budget-making.

The third, and perhaps most important, change is that collective bargaining provides the union a closed two-sided process within what is otherwise an open multi-sided process. Other groups interested in the size or allocation of the budget are not present during negotiations and often are not even aware of the proposals being discussed. Their concerns are not articulated and their countervailing political pressures are not felt except by proxy through the city's representative at the bargaining table. If a tentative agreement must be approved by the legislative body, the other interest groups may then have their say, but an agreement reached at the bargaining table carries great weight in deciding both the size of the budget and its allocation. Further discussion and political efforts may be

Public Employee Bargaining: A Political Perspective

largely ineffective in view of the presumption which runs against repudiation.

Finally, once a collective agreement is concluded by whatever body has ultimate authority, its terms are binding for the duration of the agreement. Unlike terms established by ordinance or regulations, they cannot be reconsidered and changed without the consent of the union. For practical purposes the making of the agreement forecloses further consideration until the time to negotiate a new agreement arrives.

We must now confront the question whether the change worked by collective bargaining in the political process can be justified. Can we properly give public employees a special procedure that enables them to bargain separately from, and in some respects prior to, other interest groups in the budget-making process?¹⁹ Certainly giving one of several competing interest groups such a special status and role in governmental decisionmaking is not in the pattern of our "normal" political processes and might be considered inappropriate in a democratic society.²⁰ However, closer examination of the interplay of interest groups in budget-making reveals that the position of public employees in that process is quite different from that of other interest groups. Because of that difference collective bargaining may be an appropriate means of placing public employees on more nearly equal footing with other interest groups in the budget-making process.

The special position of public employees, which provides the basis for their claim to a special procedure, has three major elements. First, payroll costs in most cities constitute 60 to 70 percent of the total operating budget.²¹ Any significant general wage increase leads almost inescapably to a budget increase. The employees, in lobbying

19. The impact of collective bargaining in economic terms is difficult to measure. Several systematic statistical studies have been made to determine the effect of collective bargaining on teachers' salaries. While the studies show somewhat different results, all agree that the effect of collective bargaining on salary levels is probably less than five percent. See Lipsky & Drotning, *The Influence of Teachers' Salaries in New York State*, 27 *IND. & LAB. REL. REV.* 18, 34 (1973). One study of the effect of collective bargaining on salaries of firefighters concluded that in cities with union contracts the hourly wages are zero to nine percent higher and the hours are two to nine percent fewer. Ehrenberg, *Municipal Government Structure, Unionization, and the Wages of Fire Fighters*, 27 *IND. & LAB. REL. REV.* 36, 47 (1973).

20. Other interest groups may, in fact, gain special access to governmental decision-making. For example, their representatives may be named to commissions which make decisions concerning their interests or their spokesmen may meet behind closed doors to persuade public officials by the weight of their arguments, the number of voters in the groups, or the size of their political contributions. For the purposes of the analysis here, this political reality is put to the side, for public employee bargaining ought to have a better justification than that it merely offsets other, questionable practices.

21. See D. STANLEY, *MANAGING LOCAL GOVERNMENT UNDER LOCAL UNION PRESSURE* 120 (1972) [hereinafter cited as STANLEY].

for increases, cannot persuasively argue that the necessary funds can be obtained by reductions in other expenditures, nor will they willingly argue that increased wage rates can be paid by reduction in the number of employees.²² They must, therefore, attempt to overcome opposition to an increased budget and this casts them in direct opposition to the taxpayers as an interest group.²³ Moreover, among all of the interest groups seeking larger budget allocations, the employees are the most visible and the most susceptible to focused resistance. A modest percentage increase adds to the budget a massive dollar amount—often the largest single increase in the entire budget—on which the taxpayer opposition can focus. No other increase can be so readily attacked with such great savings for the taxpayer. The only budget item of comparable magnitude is the allocation for education, but again salaries and fringe benefits account for 65 percent of school expenditures.²⁴ Opposition to increases in the school budget focuses most strongly on increases in teachers' salaries since the other increases are made up of many small amounts, none of which alone has any substantial impact on the total budget.

Second, in the political bargaining among competing interest groups seeking shares of the total budget, the employees are not simply one group among many bargaining on the same basis. On the contrary, the employees' demands run directly against the demands of each other interest group. Other interest groups are concerned ultimately, not with budget dollars, but with levels of service and they make budget demands in order to obtain a desired level of service. Voters urging increased appropriations for the police want more and better police protection; motorists urging larger allocations for streets want better snow removal and fewer potholes; and parents pressing for larger school budgets want more teachers, smaller classes, and better facilities. But if the employees obtain higher salaries

22. Negotiated increases, however, are in fact often followed by reductions in personnel. In New York City, a 15 percent salary increase for policemen was accompanied by a 6,000-person reduction in the size of the force. See R. HORTON, *supra* note 5, at 110. But in Detroit, salary increases for police led to layoffs of 500 other employees. See STANLEY, *supra* note 21, at 79, 126.

23. Taxpayer resistance to new taxes or higher rates of old taxes is much greater than resistance to continuation of existing taxes. See J. BUCHANAN, *supra* note 16, at 60-62. Except under unusual economic conditions, wage levels move upward so that the public employees will always be seeking increases and confronting the resistance to new taxes.

Taxpayer resistance is often reinforced by state statutory or constitutional provisions fixing a maximum mill rate which local governments can levy on property and barring them from resorting to other sources for revenue. See Rehms, *Constraints on Local Government In Public Employee Bargaining*, 67 MICH. L. REV. 919, 922 (1969).

24. See, e.g., Simon, *The School Finance Decisions: Collective Bargaining and Future Finance Systems*, 82 YALE L.J. 409, 413 (1973).

Public Employee Bargaining: A Political Perspective

and better fringe benefits, the budget dollars available will provide fewer police patrols, less snow removal and street repair, and fewer teachers in more crowded classrooms. Groups interested in the levels of different governmental services compete and bargain with each other for relative shares of the total budget, but employees must compete and bargain for a larger portion of each group's share. The employees' demand for a general wage increase is thus directly adverse to every other group's interest in the level of services.²⁵

Third, in the political process of budget-making public employees seeking general increases have few natural allies and only limited ability to form coalitions. The budget cost of a general wage increase is normally too great, and the employees have too few votes, to make the employee group an attractive political partner to other interest groups. Several interest groups seeking improved services and willing to pay increased taxes may combine to overcome the opposition of other taxpayers to increased taxes. But such coalitions will seldom support a general wage increase, for it would greatly increase the budget cost and reduce the improvement in services which they seek. Many voters may be persuaded that higher teachers' salaries may buy better education for the same money and that higher policemen's salaries may provide more police protection, but few will be persuaded that a general increase for all public employees will buy more service for the budget dollar. The public employees' only natural ally is organized labor, which in some cities has considerable political influence. Even that support is often more official than effective when public employees make demands on the budget, for most union members are also taxpayers and have less than whole-hearted enthusiasm for higher taxes to pay higher wages to their own employees.²⁶

Because of these three elements, public employees are at a unique disadvantage in the complex political bargaining process of budget-

25. Few voters are able to master the intricacies of a municipal budget sufficiently to identify the particular trade-offs being made. However, as taxpayers they are acutely aware of an increase in the total budget and will be able to place responsibility on a general wage increase. As users of particular services, voters are sensitive to the deterioration of those services and, although they may not be able to trace where the money was spent, they will hold the chief executive and the legislature politically responsible for the result.

26. See S. SPERO & J. CAPOZZOLA, *supra* note 10, at 36-37, 47-49. Spero and Capozzola describe the unyielding conduct of the pro-labor mayor of Detroit with respect to city employees and the indifference of private sector unions toward their publicly employed brethren. Public employee unions themselves are not always united, for there may be divisive ethnic differences, leadership power struggles, and competition between groups of employees for limited funds. See J. STIEBER, *supra* note 12, at 108-09.

making.²⁷ They are not one interest group among many in multi-lateral bargaining, but rather stand alone confronting the combined opposition of all the other interest groups. They must contend with both those groups opposing increased taxes and those seeking increased services. Because labor costs make up such a large portion of the budget, the employees' claims are highly visible to the other interest groups and thus vulnerable to their concerted attack.

In the absence of collective bargaining, the budget-making process, I believe, leaves public employees unable to protect their interests adequately against those whose interests are opposed. Collective bargaining creates a structure which is responsive to the political reality and gives the employees a more effective voice in the political process. The union confronts across the bargaining table a public official who represents the summarized and consolidated interest of the groups opposing the employees' interest. That public official is forced to consider the employees' interests and negotiate the extent to which their claims will exert pressures for an increased budget or for decreased services. Because the bargaining process gives the union a special opportunity to present evidence and argument and because bargaining requires the public official to give answers with reasons, the union is able to substitute, in some measure, rational discussion for political pressure. This special procedure, and the more effective voice it gives public employees in budget-making, seems an appropriate and necessary modification of the political process.

B. *Salary Increase for Teachers in an Independent School District*

The preceding analysis was based on a simple model in which all of the employees of a city acted as a single group to obtain a general increase. One variation of this simple model is the independent school district with its elected school board and its own taxing authority. Its political process for deciding on a salary increase for teachers is much like that of a city deciding on a general wage increase. However, there are illuminating differences. In such

27. Public employees are undoubtedly more effective politically than their bare numbers reflect. Their interest is direct and substantial, leading to a more certain political response and to more intense political activity. Moreover, because they are familiar with the internal workings of government, they may be able to focus their political pressure more effectively. On the other hand, they may be subject to legal restraints on political activities by little Hatch Acts and other restrictions on lobbying activities. See Project, *supra* note 4, at 934-46. There are also practical restraints on their supporting one candidate over another, for if the union candidate loses, the union must confront a political enemy. Support of a losing candidate has been characterized by a union leader as "shooting yourself out of the saddle." *Id.* at 949.

Public Employee Bargaining: A Political Perspective

a school district the direct users of the service—the parents—make up a major block of voters. They have a substantial interest in the quality of the schools and that interest is not diluted by competing interests in other governmental services. Although the parents may well be taxpayers who will help pay for increased school expenditures, they pay only a portion of the taxes, the rest being paid by nonparents, businesses, and industries.²⁸ For parents, increased taxes for better schools are almost certain to be a good bargain. Although increases in teachers' salaries reduce the money available for other improvements, parents can support salary increases and still obtain more than their tax money's worth.²⁹ Support for increased school expenditures, however, is not limited to parents, for there are others whose altruism or social responsibility encourages them to support "better schools." Indeed, members of this group may feel that support for a larger budget discharges this responsibility even though the additional money is used to raise salaries rather than the level of services. The result is that neither parents nor others who support increased school expenditures may see the demands of teachers for higher salaries as directly antagonistic to their interests.

Such tempering of opposition to salary increases can be traced to the fact that salaries for a single governmental function are being decided in isolation. Parents who are also taxpayers would be less tolerant of increases for teachers if equivalent increases had to be paid to all other city employees. Few supporters of better schools have equal enthusiasm for increased expenditures on all other governmental functions. Both parents and other school supporters will thus normally oppose general increases for all city employees while urging increased school expenditures.

The advantage enjoyed by employees in a single purpose district may be more than offset by the untempered opposition of those taxpayers who find little actual or psychic value for themselves in school expenditures and who therefore count the entire district tax

28. Voter resistance to salary increases for teachers has been more precisely described as consisting of a spectrum of decreasing support and increasing resistance along the following line: voters who have children in public schools, voters who look forward to having children in public school, voters who have no potential students, and voters who have children in private and parochial schools. Goldstein, *supra* note 4, at 605.

29. See Whitelaw, *The City, City Hall and Municipal Budgets*, in *FINANCING THE METROPOLIS* 219 (J. Crecine ed. 1970). This tax-benefit leverage is almost always substantial. Even in a predominantly residential suburb, the property owned by parents of school children will usually constitute less than half the total taxable property.

as a loss. If this group is politically dominant, then budget constraints will press parents to oppose higher salaries as an alternative to reducing the number of teachers or failing to replace old equipment.

Collective bargaining in a single purpose district takes on special characteristics because in such a district budget-making tends to become a direct political confrontation between two opposing interest groups: those who want to spend and those who do not want to pay for the particular governmental service. If the latter "taxpayer" group is politically dominant, then the employees must bargain with the users in dividing limited funds between salary levels and service levels. The process resembles that in which city employees seek a general wage increase.

However, if the political strengths of the taxpayers and users are relatively equal, the employees may be able to join forces with the users and override taxpayer opposition to obtain both higher wages and better services. Collective bargaining then becomes less an adversary process than a means of implementing that alliance. The possibilities of such a coalition are increased in school budget-making, for what the teachers demand as increased benefits may be viewed by the parents as increased service. Many parents and other supporters of schools are receptive (or at least were in the days when there was a teacher shortage) to the argument that higher salaries are necessary to obtain better teachers. Similarly, teachers' demands for reduced work load in the form of smaller classes gain support from parents as an improvement in the quality of education. Because of this natural alliance between teachers and parents, collective bargaining for teachers may be unlike collective bargaining for other public employees, particularly where school districts have independent budget-making and taxing authority.

C. *Two Assumptions*

All of the preceding analysis, both of the basic city model and the special district variation, is built on two assumptions which are not always entirely true. The first assumption is that decisions as to general wage levels are an integral part of the budget-making process so that demands for wage increases are considered in terms of budget cost and ultimate tax impact at the same time as demands for increased personnel, supplies and equipment, and added services.

However, authority to determine wage levels is often exercised by those who are not responsible for budget decisions. There is then

Public Employee Bargaining: A Political Perspective

no direct confrontation between the competing claims of employees on the one hand and taxpayers and users of public services on the other. In some cities, personnel departments or civil service commissions establish wage rates, using some "scientific" formula or "comparable" wage rates in other cities or in the private sector, without any overt consideration of budget consequences. The issue is framed as one between the employees and the personnel department, with taxpayers and users of public services excluded as parties in interest.³⁰ Such a decisionmaking process, which is largely insulated from the pressures of taxpayers and users of public services, may work tolerably well when employees are unorganized but may fail in the face of collective bargaining.³¹ The personnel department may be able to resist the pressures of unorganized employees but be unable or unwilling to resist the increased pressures generated by collective bargaining when it is insulated from the counterpressures of competing interest groups.³²

A similar disjunction between authority and political responsibility occurs in a more visible form when school boards which do not have independent taxing power are authorized to make binding collective agreements. If the school board can negotiate increases and require the city council to find the money, the school board may lack the necessary incentive to resist the added pressures generated by collective bargaining.

The second assumption is that most voters are taxpayers and therefore have reason to oppose increased wages which result in increased taxes. This assumption has greatest validity when the principal source of revenue is the property tax and most voters are home owners. Any wage increase can be expressed in terms of mill rate increase, a sensitive political issue for every home owner. The validity of the assumption decreases, however, as the number of renters increases. Although property taxes are paid out of rent, few renters are sensitive to increases in mill rates and therefore may be indifferent to

30. When wages are established on some supposedly objective basis, the debate focuses on the choice of the formula to be used or the wages to be considered comparable. The nature of the debate obscures the fact that the choice of the formula or comparable wage is largely a political choice. As a result, the political interest groups appear to have no appropriate role to play.

31. The union's pressure may be reinforced by the skill of its negotiators in developing and manipulating the formula and the union's resources in gathering data to be used in making comparisons. The city's negotiator may be unable to counter the union's arguments, particularly if he must bargain with a number of different unions concerning many different kinds of jobs.

32. For a vivid example of this in New York City, see R. HORTON, *supra* note 5, at 123.

or even support wage increases for which they must indirectly pay. The proportion of renters tends to increase with the size and density of the city, resulting in reduced resistance to demands for wage increases. This tendency, however, may be partially offset as the city increases its reliance on sales and income taxes. These taxes are felt directly by nearly all voters, thus sensitizing them to the budget costs of wage demands.³³ The impact of collective bargaining on the political process, therefore, will depend in part upon the size and density of the city and its tax structure.

III. Collective Bargaining and Budget-Making: Fragmented and Complex Models

The simple model developed in the preceding section treats all of the employees of the public employer as members of a single unified interest group seeking increased benefits for all and treats the employer's decision as a single response in terms of the total budget. In reality, however, such solidarity among the employees is rare and decisionmaking by the public employer is often fragmented. Policemen, firemen, teachers, and many other employee groups customarily have separate organizations, each pursuing its own goals for its own constituency.³⁴ Decisions as to wages are often made by department heads and incorporated into departmental budgets, each department pursuing its own goals with varying degrees of central coordination of wage policies.³⁵ Fragmented employee representation and employer decisionmaking may exist whether there is collective bargaining or not.

The purpose of this section is to examine more closely how this fragmentation affects the political process through which terms and conditions of employment are determined. More specifically, this section will try to set out in simplified form, first, the politics of the budget-making process when separate employee groups seek wage increases for themselves, both with and without collective bargaining; and, second, how uncoordinated employer responses to those demands affect this process.

33. For examples of voter resistance to wage increases reflected in increases in local income tax, see STANLEY, *supra* note 21, at 125-29. However, the sensitivity is probably not as great as in localities in which most revenue is generated by the property tax, for the cost of wage increases cannot be translated so directly into increased income tax rates. Moreover, a one cent increase in the sales tax or a one percent increase in the income tax rate may not have the same concreteness and provoke the same political reaction as a \$100 increase in property tax bills.

34. See R. HORTON, *supra* note 5, at 7, 63-64.

35. See *id.* at 12.

Public Employee Bargaining: A Political Perspective

A. *Fragmentation of Employee Representation*

In the absence of collective bargaining a well organized, politically effective employee group may be able to protect its interests in a fragmented budget-making process quite adequately. The police, for example, may join with those seeking better police protection to obtain a larger share for the police department. Although their interests are potentially in competition with each other because higher salaries may mean fewer patrolmen, their combined political strength may be enough to obtain increases in both salaries and service. Taxpayer opposition to this particular increase is minimal because it has little or no discernible effect on the total budget on which the taxpayer focuses his attention. However, because of the taxpayers' opposition to an increase in the total budget, the police department's larger share may be achieved at the expense of other interest groups, including employee groups, which are less effective politically. One consequence is a disparity in benefits gained by the police as compared to those gained by other employee groups with less political effectiveness.

Other employee groups, such as firemen, teachers, sanitationmen or social workers, may, of course, play this game simultaneously, each obtaining a larger share at the expense of politically weak groups. The success of each employee group will depend upon its relative political strength, including its ability to join with client voter groups. The differences in political strength will be reflected in disparities in budget increases and in salaries. As the number of employee groups playing this game increases, gains made by one group help trigger demands by the others, with substantial and visible budget consequences.³⁶ This, in turn, tends to coalesce taxpayers and users of other services in their opposition to increases given to any particular employee group. The disparities between employee groups may thus be reduced, but so long as there are differences in political effectiveness, there are almost certain to be differences in results.

If some employees bargain collectively and others do not, those who bargain gain an advantage over the others because it increases their political effectiveness. As pointed out in the preceding section, formal bargaining provides employees an official forum and a structured procedure which is a part of the budget-making process. Agreements reached through this procedure carry presumptive, if not conclusive, weight in the ultimate political accommodation and any

36. See STANLEY, *supra* note 21, at 67-71.

budgetary limitations will be felt first by those who have only informal procedures to reach informal understandings. If the employee groups bargaining collectively are those which are most effective even without bargaining, as is often the case, then the disparities between their gains and the gains of other employee groups will be accentuated.

If all, or most, of the employees bargain collectively, though in separate bargaining units, and if bargaining decisions are centralized or coordinated on the employer side, the bargaining process will create pressures for uniformity and thus tend to reduce disparities. All of the employee groups which bargain collectively have access to the same procedures with equal opportunity to persuade the employer's representative and to reach agreements which will carry presumptive weight in the budget process. Collective bargaining procedures most assist those groups which are least able to exert significant influence in the normal political process; they thus tend to equalize the political effectiveness of employee groups. In addition, the different groups are often negotiating concurrently with the same representatives of the public employer. The high visibility of settlements creates almost compelling pressures on the employer's representatives to treat all groups with an even hand, regardless of differences in their political strength. The claim for equal treatment carries, in itself, considerable political weight and is difficult to deny in face-to-face negotiations. The structured bargaining process thus strengthens the position of groups which are otherwise politically weak.

This pressure for uniform treatment may create a bargaining process closely akin to that of the simple model described earlier, for the representatives of the public employer, in bargaining with one group, will project the cost of the proposed wage increase when granted to all groups and measure the impact of that general increase on the total budget. In practice, the agreement with one major or leading group will become the pattern for all other groups and negotiation with the other groups will be deferred or dawdled until the pattern agreement is reached.³⁷ The political and budget-making process is thus substantially the same as if the pattern-setting group and the public employer were bargaining for a general increase for

37. Earlier agreements may be reached with other groups on the understanding that these groups will be afforded increases in wages and other benefits equivalent to those negotiated by the pattern-setting group. The agreements may remain informal until the pattern is set, but in some cases the agreement may be formalized with a parity clause included.

Public Employee Bargaining: A Political Perspective

all employees. This does not mean that all groups will necessarily be given identical benefits: It means only that the differences must be perceived as fair and not based solely on differences in political power.

B. *Fragmentation of Employer Authority*

Fragmentation of authority on the public employer side significantly changes the relative weight and interplay of interest groups in the decisionmaking process. A typical instance of such fragmentation is a municipality in which department heads are allowed to determine wage levels in their departments. A department head normally shares his employees' views that they are rendering service of first importance, that they are working hard, and that they need and deserve more pay.³⁸ Often the department head has held lower-level positions in the department or, like a police chief or a school superintendent, considers himself a part of the same professional group as the employees under his supervision and shares their feeling that the profession is undervalued and underpaid. These tendencies are reinforced by his daily contacts with department employees, his desire to retain their loyalty and cooperation, and his role as their advocate in the interdepartmental budget competition. His responsiveness to their interests may be further solidified if his salary increases tend to follow their wage increases.³⁹

At the same time, the department head feels little or no direct pressure from taxpayers and he discounts or ignores the demand for services rendered by other departments. In the budget process he seeks as much as possible for his department in order to satisfy the demands of his employees and the users of his services. Restraint is exercised by those who must accommodate the competing demands of taxpayers and the users of various services. This restraint is generally imposed in the form of a departmental budget ceiling. In the face of an upper limit on expenditures the department head must accommodate the competing demands of his employees and those using the services of his department, for he can pay higher wages only by reducing the number of employees or some other service component.

Some departments may be quite susceptible to pressure by users,

38. See R. HORTON, *supra* note 5, at 13.

39. Some school boards establish a policy of tying the salaries of the superintendent and the administrative staff to the salary scale of the teachers. The superintendent may nevertheless serve as one of the leaders of the employer negotiating team.

for any deterioration in services may be highly visible and sharply felt; other departments may feel almost no such pressure because the decrease in service is scarcely identifiable. A reduction in garbage collections will generate immediate pressure; a reduction in police patrols will create less acute but nonetheless tangible pressure; but reductions in the number of librarians or clerks in the tax office may be noticed only by other librarians and other clerks. Even where user pressure is strongest, however, it may be inadequate to overcome the department head's predisposition toward supporting the demands of his employees. User protests may be no match for the employees' daily personal contact with the department head.

Collective bargaining greatly increases the employees' advantage when the employer's authority is fragmented. A union, confronting a department head across the bargaining table, is in the strongest possible position. Bargaining narrows the department head's focus to the interests of the employees, with which he tends to sympathize. No users or other interest groups are present to remind him of competing claims. His arguments in response to the union's wage demands are likely to be half-hearted, for he realizes that he relies on the cooperation and goodwill of union members. He regards any concession made to the union as adding only an insignificant fraction to the total budget. In fact, he may view an agreement with the union providing for higher wages as reinforcing his own request for an increased departmental budget. Even though a ceiling has been placed on his budget, the agreement for higher wages may give him enough leverage to break through the ceiling or to obtain a supplemental appropriation. Rejection of his budget request will not necessarily invalidate the agreement but will probably result in reducing the number of employees and the level of service. If the users of the service complain, the department head can place the blame on the lack of funds appropriated for his department.

When bargaining is unified on the public employer's side and bargaining decisions are made by a politically responsible representative, that representative is the focal point for all of the interests opposing the employees' demands. Collective bargaining may give employees a specially effective means of access to the political process, but this advantage is offset to some degree because the union is compelled to bargain against a consolidation of opposing interests. By contrast, when bargaining is fragmented and department heads make the bargaining decision, the opposing interests are not fully represented at the bargaining table. When any agreement is reached,

Public Employee Bargaining: A Political Perspective

the city incurs a moral, if not legal, obligation to live up to its terms. As each department joins in this game, competing with every other department to obtain more, the upward pressure on the total budget and the downward pressure on the level of services becomes nearly irresistible. Political responsibility becomes obscured because restraints do not directly impinge on the officials negotiating the agreement and the city appears helpless before the demands of its employees.

IV. Subjects of Bargaining: Variations on the Theme

The preceding analyses have been limited to describing the political process when determinations of wage levels are involved. But employees are concerned with more than their paychecks and the city is concerned with more than its monthly payroll. Indeed, public employee unions seek to bargain about an even wider range of subjects than those covered by collective agreements in the private sector. Police may seek to bargain about the number of men in a patrol car, the number of men on a shift, and the establishment of a public review board; teachers may seek to bargain about the number of classes to be taught, the number of students in the class, and the content of the curriculum; and social workers may seek to bargain about case load, the qualifications for welfare benefits, and the amount of those benefits.

In the determination of wage levels or wage increases, the political process centrally involved is budget-making, which creates a special alignment of political forces contesting the size and allocation of current expenditures. Other terms and conditions of employment involve other alignments of political forces and the impact of collective bargaining on the interplay of those forces may be quite different. The purpose of this section is to examine some of the variations in the political process when other subjects of bargaining are involved. The categories of subjects discussed are not intended to be comprehensive, nor are they necessarily mutually exclusive, but they suggest the degree to which political configurations may vary depending on the subject of bargaining.

A. *Indirect Wage Payments*

This category includes employer payments for such benefits as hospital and medical insurance, group life insurance, fully funded pensions, meal allowances, and uniform allowances. They are simply

other forms of wages which require current expenditures by the public employer and which therefore have the same dollar impact on the current budget as direct wages. The political forces will respond to increases in these categories in substantially the same manner as to increases in direct wages, at least so far as taxpayers and users of public services are involved.

On the employee side, however, the pressures may be somewhat different. In one round of bargaining different groups of employees may press for different benefits—the police for increased pensions, office employees for more medical insurance, and truck drivers for more life insurance. If each is successful in obtaining the various benefits, in the next round each group is likely to demand the particular benefits the others enjoy, the claim for equal treatment adding extra weight to those demands. Thus, many cities which have given special pension benefits to policemen and firemen have discovered that they have thereby strengthened the claim of other employees to more costly pension plans.

B. *Deferred Wage Costs*

Negotiation of benefits which impose no burden on the current budget but defer costs to future budgets significantly changes the political pressures felt at the bargaining table. Granting pension benefits without a current budgetary charge equal to the annual cost of funding those benefits provides an instructive example. Failure to fund the pension does not decrease its value to employees, for that value is measured by the size and certainty of the pension payment on retirement. Whether the city sets aside money from the current budget to pay for accumulating pension liabilities or pays from future budgets as employees retire makes little difference to the employees. The city must pay in any case when the pension is due.

However, failure to fund greatly decreases the opposition of taxpayers and users of city services to the pension provision, for the full cost is not reflected in the current budget and is not immediately felt in increased taxes or decreased services. The full cost is not felt until years later when those who agreed to the pension are normally no longer present to be held politically responsible. Deferral of costs has the effect of satisfying employee demands while tranquilizing those political forces which oppose increased wages. Under the pressures generated in collective bargaining the city's representative faces a nearly irresistible temptation to reduce the union's wage demands by agreeing to increased pension benefits. If the pension plan is not

funded these benefits create no immediate budget pressures but they bind future budgets to heavy burdens.

The deferred pension costs will, of course, ultimately appear in the budget and will at that time increase the resistance to wage increases. However, the "equal treatment" principle will then work in favor of the union's demands for take-home pay in line with the prevailing pattern of current increases. The total increase in wage costs over time will thus tend to be greater than if the pension costs had not been deferred but rather subjected to the full weight of taxpayer and user opposition.

Deferral of costs to later budgets may also be accomplished by long-term collective contracts. Such deferral will have much the same political effect as a postponement of pension costs. The opposition to increased wages will be gauged primarily by the increased budget cost during the first year. A three-year contract with a small increase in the first year and a large increase in the third year will be more acceptable politically than a contract which provides for equal increases each year. Taxpayers and users of services respond more strongly to current tax increases and current deterioration of services than to future taxes and future services. In the year following expiration of the long-term contract, opposition to another round of increases may result from the previous year's budget rise. But again opposition will be mitigated by the "equal treatment" principle which works in favor of demands for a wage increase in line with that year's prevailing pattern.

C. Reduction in the Level of Service

Shorter work weeks, longer vacations, or additional holidays mean that each employee renders less service. This diminution can be, and in the long run often is, offset by an increase in the number of employees, which of course necessitates a budget increase. Such terms of employment can thus be seen as simple counterparts of wage increases. However, when reduced work load terms are negotiated, the parties seldom contemplate asking for an increase in the budget to hire more employees; the tacit assumption is that, at least in the short run, services will be reduced.

Because taxpayers react more immediately and vigorously to increases in current taxes than to reduction in the services those taxes will buy, they generate less opposition to union demands for reduced work loads than to increased wages. Opposition comes mainly from the users of the public services and its strength varies with the serv-

ice involved. Closing city offices for one day may cause comment, but reducing garbage collections may change the outcome of an election.

Although gradual deterioration of service may at first generate limited political response, the fall-off can produce the kind of generalized dissatisfaction which leads to political change when it becomes substantial and widespread. The growing demands for restoration or improvement of services will at that point exert added pressures on future negotiations to retard further wage increases or further reductions in work load. Thus, in the long run, the political pressures on these terms of employment probably work substantially the same as, or interchangeably with, those for wage increases.

In one respect, however, pressures in the bargaining process work differently on some of these terms than on wage rates. Significant differences between the work week, vacations, and holidays enjoyed by public employees and those enjoyed by employees in the private sector are relatively easy to perceive. In the political process such visible comparisons generate pressures of their own. They strengthen the employees' demands when their benefits are below the private sector standard and weaken their demands when the benefits sought are above the standard. Comparisons of wage rates, however, are much more difficult since wage disparities may be attributable in part to real or supposed differences in jobs. Wage comparisons cannot therefore exert the same degree of pressure as more obvious and unambiguous comparisons.

D. Increase in the Level of Service

Some employee demands for reduced work load may increase rather than decrease the service level. For teachers, reduction in class size means easier and more enjoyable teaching; for parents, it means an improvement in the quality of education. As a result, teachers and the parents will join to press for smaller classes. Similarly, demands by policemen for minimum manning of shifts and demands by social workers to limit their case loads will be supported by those who seek more police protection and more individualized social services. As a result, employees, in pressing for such terms, are able to build an alliance with the interest group seeking an increase in the level of the particular service.

This alliance between a group of employees and users of the particular service changes the configuration of political forces, but it does not necessarily shift the political balance. Still solidly arrayed against the alliance are all of those opposing an increased budget,

Public Employee Bargaining: A Political Perspective

those interest groups more concerned with other services, and even other groups of employees. Reduction in class size may be supported by teachers and parents, but it will be opposed by taxpayers and motorists, as well as by policemen and public works employees because the added cost of smaller classes reduces the funds available for wage increases for them.

However, if bargaining is not unified or centrally controlled on the public employer's side, negotiation of terms which both reduce the employees' work load and improve the quality of service may preempt the exercise of any meaningful political restraints. In negotiations on class size the school board feels the combined pressure of teachers and parents and is itself normally predisposed toward improving the quality of education. If the school board is not responsible for raising the required revenue, it is insulated from countervailing pressure. However, once the agreement is reached between the school board and the union, there is a nearly inescapable commitment to a certain level of expenditure. Unlike the higher costs which result from agreements to boost wages or other benefits, the increased costs for reduced class size cannot be offset by reducing the number of employees.⁴⁰ Although the city council may have legal authority to disapprove the school board's budget, it will often be unable to do so without upsetting the collective agreement and without suffering the ensuing legal and political consequences. The end result is that the question whether the increased level of service is worth the increased cost does not get fully exposed to the political process until after it has been largely foreclosed by a collective agreement which is made between nonadverse interests.

E. *Determination of Goals and Methods*

Not all potential subjects of bargaining involve budgetary considerations. Professional employees, in particular, may want to participate in determining the goals to be achieved by the agency and the methods to be used in achieving those goals.⁴¹

When teachers seek greater control over choice of textbooks or student discipline policies, budget costs and levels of service are not in question; the only issues are the purposes of the school and the means

40. Some of the cost may be offset by cutting back on "frills" such as art, music, and foreign language instruction; purchase of expensive equipment may be cut out; maintenance or repair of buildings may be deferred. This, however, may provide relatively insignificant savings, compared with the salary costs.

41. See WELLINGTON & WINTER, *supra* note 2, at 137-41.

of their accomplishment. Similarly, when teachers seek curriculum changes or support for certain extra-curricular activities, there may be cost implications, but the dominant issue is one of educational goals and the worthwhileness of what is being proposed as against what is being done. Such demands present a totally different political configuration than demands for increased salaries or smaller class size, for they raise no resistance from taxpayers as a group or from others who seek a larger share of the budget for other purposes. The only interest groups directly concerned—and they may be deeply concerned—are the parents and the students. Furthermore, their interests are not necessarily opposed to those of the teachers. Unlike the situation in which wages or other benefits with budget costs are sought, there is no combination of interest groups opposing the teachers' demands. The imbalance of political pressures, which is the underlying justification for collective bargaining as a method of giving employees special access to the political process, is not present.

In addition, disputes over the goals and methods of a public agency may create interest groups which cut across the interest groups concerned with budget costs. Some parents may favor strict student discipline, some may favor lenience and toleration, and some may favor leaving wide discretion in the individual teacher. Similarly, parents may disagree as to what subjects in the curriculum should be emphasized or what extra-curricular activities should be supported. The interest groups shift from issue to issue, each issue presenting a potentially different alignment.

Teachers, too, often disagree among themselves on such issues, sometimes with diametrically opposed and strongly held views. Though the union may speak for the majority, it is less likely to represent a consensus when making demands on such issues than when making demands for increased benefits or decreased work loads.

Collective bargaining on such subjects enables the union to speak with a single voice as representative of those holding opposing views and gives the union increased political effectiveness when it is confronted not by a coalition but by a fragmented opposition. More important, the union does not bargain with the representative of those holding an opposing view on "goal" issues; it bargains with the representative of those who seek lower taxes and more services. The government representative is thus under pressure to accept the union's demands on nonbudget items in return for union concessions which will keep down the cost of the agreement.

Public Employee Bargaining: A Political Perspective

F. *Personnel Practices and Administration*

Seniority rules, protection against discharge, work schedules, grievance procedures, and many other customary subjects for bargaining have no significant impact on the budget and do not impinge on the goals of the agency. Rather they serve primarily to govern the relations between the employees and their superiors. Neither taxpayers nor users of public services exert any direct pressure on specific terms in this category; they exert only a diffuse pressure to get more and better service for their tax dollars. Resistance to the union's demands comes primarily from within the government itself. Agency and department heads will resist encroachments on their managerial authority in the name of better and more efficient service to the public.

The primary opposing interest groups are thus the public employees on the one side and the public managers on the other. The generalized pressure of taxpayers and users normally strengthens the management position. In negotiations, the competing claims are between efficiency and fairness, discretion and equal treatment, flexibility and regulation by established rule. Private sector experience has demonstrated that these issues are best worked out by face-to-face discussions between unions and management across the bargaining table.

V. Some Implications of the Political Perspective

This analysis has treated employee bargaining as a part of the political process. Obviously it has important implications for how bargaining should be structured and conducted in order to make it fit appropriately within that process. Some of those implications began to emerge in the preceding discussion, but they need to be made explicit and their complexities elaborated. Other implications need at least to be identified. Again, the purpose is not to be comprehensive but only suggestive, to explore preliminarily where this perspective of public employee bargaining might lead.

A. *Integration of Bargaining and Budget-Making*

The most obvious implication of this political analysis of public employee bargaining is that collective bargaining on terms which substantially affect budget allocations and levels of service must be integrated with the budget-making process. To achieve such integration collective bargaining policies and decisions must be centrally

coordinated and controlled.⁴² The effective power to formulate these policies and render decisions must be merged in the public official or body which is politically responsible for the budget.

All employees of a public employer are paid from a common budget funded by the same tax system. Increases granted to one group of employees trigger demands by other groups. Those subsequent demands are difficult to resist because claims of equity and fairness carry substantial weight in the political process, particularly when brought to bear through collective bargaining. Because of the coerciveness of such comparisons, diffused authority to bargain and bind the public employer makes the budget vulnerable to the cost of a city-wide increase equal to that agreed upon by the most weak-willed or generous department head.⁴³ Control over bargaining must be sufficiently centralized to ensure that a decision affecting one employee group takes into account the effect it will have on other employee groups and the cost impact on the total budget: This ultimate cost must be calculated in terms of tax rates and levels of service.

Because payroll costs make up 60 to 70 percent of a typical municipality's current budget,⁴⁴ the impact on taxes and service levels is likely to be significant. Before an agreement is reached the demands of the employees must be weighed against the opposition of taxpayers to increased taxes and demands of users for improved services. This accommodation of competing interest groups is, by its very nature, a political compromise which must be made by some individual who is politically responsible to all of the competing interest groups.

Centralization of bargaining authority is much easier to advocate than to achieve in practice, for budget-making authority in cities is often widely diffused, various departments and agencies possessing a substantial measure of budgetary autonomy. As employees organize department by department, the simplest and least disruptive response is to authorize each department head to bargain with the union representing his employees. The bargaining system develops as fragmented as the budget-making system on which it is based. Once this fragmentation has occurred, centralizing control over bargaining may

42. See *id.* at 117-36. The authors emphasize the importance to public employers of restructuring internal allocations of power and centralizing the bulk of authority in order to meet the pressures of collective bargaining.

43. For illustrations of the dangers which arise when local government fails to achieve centralized control of bargaining and coordination of control over wages and budgets, see Burton, *Local Government Bargaining And Management Structures*, 11 IND. REL. 123 (1972).

44. See note 21 *supra*.

Public Employee Bargaining: A Political Perspective

be nearly impossible because it would threaten too many established patterns and vested interests. Even spiraling wage agreements may not lead to the necessary governmental restructuring, for politicians may find it more expedient to blame the power of unions than the weakness of fragmented government.⁴⁵ Centralization can be encouraged, if not compelled, however, by public employee bargaining statutes which expressly place the authority and responsibility for concluding collective agreements on the chief executive or the legislative body.⁴⁶

When authority is not fragmented along departmental lines, it still remains divided between the chief executive and the legislature: The executive lacks legal authority to enact a budget and the legislative body lacks practical ability to negotiate an agreement.⁴⁷ This division of responsibility can create serious problems if the relative roles of the chief executive and the legislature are not clearly defined and if those roles are not the same in collective bargaining and budget-making. Coordinating the bargaining and budget-making roles of the two branches is not difficult conceptually. Just as the mayor prepares a proposed budget to be approved or disapproved by the council, so he may negotiate an agreement with the union subject to its approval by the council.⁴⁸

45. The devastating consequences in New York City of the failure to exercise centralized control over collective bargaining and integrate it with budget-making is graphically described by Professor Horton: "Again, the problem in New York City is the absence of effective political management. . . . There is no longer a strong management group in New York City with whom municipal unions deal, only a potpourri of disparate public officials who play managerial roles without either managerial power or perspective." R. HORTON, *supra* note 5, at 119.

46. The law frequently leaves unclear who has authority to bargain for the public employer. The courts have not always been helpful in resolving doubts in favor of a result which will centralize authority and integrate it with the budget process. In *Civil Serv. Comm'rs v. Board of Supervisors*, 384 Mich. 363, 184 N.W.2d 201 (1971), the court interpreted ambiguous statutory provisions as depriving the Wayne County Civil Service Commission of power to negotiate with highway employees although the Commission negotiated with other county employees; the court held that the authority to bargain was in the Wayne County Road Commission.

47. The various roles which the chief executive and the legislature play in the collective bargaining process are described in WELLINGTON & WINTER, *supra* note 2, at 121-36.

48. The Connecticut statute spells out their roles even more precisely. The chief executive is explicitly designated as the representative of the public employer in collective bargaining. CONN. GEN. STAT. ANN. § 7-474(a) (1958). If an agreement is reached with the union, it becomes binding unless it conflicts with a city charter or ordinance or requires funds in excess of those already appropriated. The legislative role is limited to approving or disapproving the necessary changes in the city charter or ordinances and the additional funds to implement the agreement. *Id.* § 7-474(b). However, the statute on its face appears to give the chief executive power to make a two or three-year agreement which will bind the legislature to appropriate the necessary funds in future years. This seems a rather surprising and potentially distorting reallocation of fiscal authority.

One danger of this division of authority is that a union which has failed to win a wage increase in bargaining with the mayor may try to induce the council to include it in the budget. Such "end runs" may be successful when only a few groups of employees are organized. When most of the employees are organized, however, legislators soon learn the folly of setting off a chain reaction which will escalate budget costs.

A greater danger is that the chief executive will agree to a costly contract and attempt to shift to the legislature the onus of either rejecting the union's demands or approving increased taxes. This tends to frustrate the bargaining process because there is no established procedure for negotiations between the union and the legislature to work out compromises which should have been made at the bargaining table. It is doubtful, however, that such maneuvers seriously distort the political process, for both the chief executive and the legislature are politically responsible for the budget. If the costly contract is approved, both will be answerable to the taxpayers for any increased taxes and to users of public services for any deterioration of those services. If the legislature rejects the costly contract, the chief executive will lose most of the good will he gained with the union and he will lose support among taxpayers. The visibility of the collective agreement and its budget consequences prevents either the chief executive or the legislature from escaping answerability for their roles.

School districts which do not have independent taxing power raise special problems, for in such districts the school board negotiates the collective agreement but the city council provides the money. If, as is the case in some states,⁴⁹ the city council is legally required to provide the money which the school board says is necessary to operate the schools, the pressures created by teacher bargaining may become unmanageable. Because increased school costs lose political visibility when they are incorporated into the general budget and the mill rate set by the city council, the school board is able to shift to the council much of the onus for increased taxes and deterioration of other services and thus escape full political answerability to the voters for the cost of its collective agreements.

If, however, the city council is not legally required to provide the requested funds, it can determine the school budget in conjunction

49. See, e.g., MASS. GEN. LAWS ANN. ch. 71, § 34 (1971); *Watt v. Chelmsford*, 323 Mass. 697, 84 N.E.2d 28 (1949).

Public Employee Bargaining: A Political Perspective

with other departmental budgets and compel the school board to bargain within those limits or return to the council for additional funds. The council may thus upset an agreement negotiated by the school board. While such a risk tends to frustrate the bargaining process, it can be minimized by informal discussions between members of the school board and members of the council prior to making the agreement. Experience has suggested that even though bargaining responsibility and financial responsibility are separated, the bargaining process can function efficiently if the taxing authority retains the effective power to refuse the requested funds.

Grants-in-aid from federal or state sources reduce the financial burden on the local government, but whether such grants disjoint the bargaining and budgeting functions depends upon the form of the grant. Fixed grants of less than the full cost of a department or service do not change the basic political process, for whatever additional sum the city decides to spend must be paid from the city's own budget. Employees' demands for increased wages will still be resisted by the taxpayers and users of public services.⁵⁰

Matching grants have a somewhat different impact. They encourage liberality in collective agreements as in other expenditures, because the gain to employees is double the cost to taxpayers. This phenomenon can have dangerous "equal treatment" radiations where one department receives large matching grants and there is no centralized control over bargaining. Generosity in that department will trigger costly increases in other departments.

Grants-in-aid which are appropriated at the state level in order to enable local officials to reach an agreement can result in a total evasion of local political pressures. In a number of instances disputes over teachers' salaries have been resolved by the state providing a supplemental grant to meet the costs of the agreement. Decision-making as to bargaining and budgeting is then split between local and state officials. The local officials who make the agreement escape the pressures of local taxpayers and users of local services; the state officials who provide the money are largely insulated by low visibility from pressures by state taxpayers.⁵¹

50. Large new grants may reduce resistance to wage demands the first year because the city may be able to grant wage increases with no tax increases or reductions in service. In subsequent years, however, resistance to further wage increases will revive.

51. A different form of "end run" occurs when public employees of local governmental units obtain state legislation mandating salaries, hours of work, or other terms of employment with budget consequences. The state legislators grant the benefits but the local officials must bear the consequences of budget decisions.

Taxpayers may engage in analogous efforts, though in a less visible and more nar-

Integration of bargaining and budgeting does not require that bargaining be completed prior to adoption of the budget, however desirable that may be.⁵² The budget will normally contain funds to meet the estimated costs of a new collective agreement and that estimate will represent a preliminary judgment as to the accommodation to be made between the competing interest groups.⁵³ The funds may be visible in salary items, included in a contingency fund, or hidden in other budget items. If the salaries ultimately negotiated are higher than estimated, then the extra costs can be met by reducing the number of employees, cutting back other services, or making supplemental appropriations.⁵⁴ The pressures at the bargaining table remain substantially the same as when the agreement precedes budget-making. In either situation the process of accommodation is similar and the authority and political responsibility rest in the chief executive and legislature.⁵⁵

Placing central control over collective bargaining in the hands of a politically responsible official or body does not require that the mayor or members of the city council must polish the chairs at the bargaining table. It means only that those who are politically responsible must establish the guidelines for bargaining, keep informed of the issues, and make the ultimate decisions. A mayor or councilman will seldom have the skill or experience, much less the time, to conduct the negotiations himself.⁵⁶ However, the persons bearing ultimate political responsibility cannot properly isolate themselves entirely from the bargaining process. Bargaining in the public sector

rowly focused form. State limitations on the power of local governments to levy taxes impose a ceiling on the level of expenditures and limit the normal operation of the local political process. Bargaining then becomes a confrontation between employees and users of public services, neither one of which can tolerably compromise enough to reach agreement, particularly in periods of rising prices and wages and increased expectations for public services. The consequences of this are vividly described in Rehms, *supra* note 23.

52. It may be practically impossible for the parties to reach an agreement and not even statutory requirements that bargaining be ended before the budget is submitted can compel agreement before a certain date. See STANLEY, *supra* note 21, at 116-18.

53. See Derber, Jennings, McAndrew & Wagner, *Bargaining and Budget Making in Illinois Institutions*, 27 IND. & LAB. REL. REV. 49, 56-57 (1973).

54. If the city relies on the property tax for revenue, supplemental appropriations may require deficit financing, for the mill rate is politically difficult, or even legally impossible, to increase once it has been levied.

55. The bargaining game may be modified with a side game of hide-and-seek as to the funds available in the budget for increases. In this game the public employer has the advantage, for its representative knows of funds about which the union can only guess. As a result the union usually refuses to play by insisting that the city can find the money if it wants to.

56. See Mulcahy, *Municipal Personnel Problems and Solutions*, 56 MARQ. L. REV. 529 (1973); Shaw & Clark, *supra* note 2, at 870-71.

Public Employee Bargaining: A Political Perspective

is a part of the political process and one of its functions is to enable public employees to present their demands to a politically responsible official, make him feel the weight of their arguments and interests, and require him to give a reasoned response.⁵⁷ This function is frustrated if he sends someone else to the bargaining table to sit, listen, and reply in order to insulate himself from the pressure of the employees' presentation and avoid the necessity of response.⁵⁸

Whoever bargains for the government is his representative and must serve as a conduit rather than a barrier. The person with political responsibility must feel the pressure of the employees' interests when he accommodates the competing interests of taxpayers and users of public services.⁵⁹

B. Number of Bargaining Units

From the political perspective it might first appear that all employees of a public employer should be united in a single bargaining unit.⁶⁰ Closer examination, however, suggests that if there is

57. Delegation of not only the negotiating function but its responsibility is sometimes based on a desire to remove it from "politics" by "professionalizing" it. But, as Professor Horton has emphasized, "[M]unicipal labor relations is an inherently political process. The allocation of public money and the fixing of public and managerial policies, two major functions of the labor relations process, are central political acts in any organized society." R. HORTON, *supra* note 5, at 123. Speaking of New York City, which has followed this path, he says, "The key to reform is repoliticization." *Id.* at 124.

58. One of the arguments used to justify delegating the negotiation function is that the negotiator can play one union against the other by confusing the rank and file about what concessions are possible and who has the authority to make them. The mayor himself, and his agency chiefs, can disown any direct knowledge or responsibility for the negotiators, making it difficult for any voter to conclude that he has been unreasonable in rejecting employee demands. See G. QUESTER, *THE POLITICS OF PUBLIC SECTOR LABOR RELATIONS* 20 (Institute of Public Employment Monograph No. 1, 1973). The negotiator has an incentive to reinforce this insulation, for he has a desire to move to the center of the stage and to demonstrate his indispensability. See *id.* at 16-17.

59. Reliance on subordinates or professional negotiators to conduct the bargaining is an open invitation to the union to by-pass the negotiators by approaching directly the politically responsible official, particularly when the union believes the negotiator is serving as a barrier rather than a conduit. This may make discussions at the bargaining table of little use. Responsibility, however, rests not on the union for its effort to by-pass normal bargaining procedures, but on the public official for erecting the barrier. The union is simply trying to present its case to the politically responsible person—the central function of collective bargaining.

60. Advantages and disadvantages of smaller or larger units are canvassed in Rock, *The Appropriate Unit Question in the Public Service: The Problem of Proliferation*, 67 MICH. L. REV. 1001 (1969). The author generally urges larger units rather than smaller units. This view has been incorporated into some state legislation. See Shaw & Clark, *Determination of Appropriate Bargaining Units in the Public Sector: Legal and Practical Problems*, 51 ORE. L. REV. 152, 154 (1971). Hawaii, by statute, provides for 13 statewide bargaining units for all state employees. HAWAII REV. STAT. § 89-6

adequate centralized coordination of bargaining on the public employer's side, then fragmentation of the employees into a number of bargaining units, each represented by its own union, creates no unmanageable problems. Indeed, multiple bargaining units may serve both the bargaining and budgeting problem better than a single unit represented by a single union.⁶¹

City employment spans an exceedingly wide range of skills, from the professionally trained engineer and health officer to the unskilled janitor and park attendant. The work and working conditions of city employees vary so greatly that their interests may be better represented by separately chosen unions and their different problems may be better worked out in separate negotiations. A single union can, and commonly does, represent employees with varied and even competing interests. In fact, one function a union serves is to reconcile and compromise those interests by its internal processes. However, diverse interests within the union create internal tensions. If the diversity is too great the resulting tensions may be more than the union can manage. These tensions are then manifested at the bargaining table by the union making an array of demands designed to placate every group in the union. Bargaining becomes protracted and if the union is unable to resolve differences by its internal processes, it may be unable to work out compromises at the bargaining table or accept what might otherwise be considered a reasonable package. Thus, while multiple bargaining units add to the employer's negotiating burden, that cost may be less than negotiating with a conglomerate union which is trying to represent greater diversity than its internal processes can reconcile. Moreover, if bargaining reaches an impasse, the consequences will be less disruptive if only one group of employees is involved than if all employees are involved.

Fragmentation on the employees' side obviously makes centralized coordination on the employer's side more necessary and more difficult.⁶² If the fragmentation is too great, as in New York City where there are some 200 bargaining units, the process may be difficult

(West Supp. 1972). The dominant statutory pattern, however, permits great fragmentation of bargaining units. See Grodin & Hardin, *Public Employee Bargaining in Oregon*, 51 ORE. L. REV. 7 (1971); Shaw & Clark, *supra*, at 154-59.

61. For the way in which Detroit achieved central coordination of collective bargaining and integration with the budgeting process while negotiating 45 master agreements and 30 supplemental agreements, see S. SPERO & J. CAPOZZOLA, *supra* note 10, at 45-50. Milwaukee, using quite a different structure in which the legislature has almost total control, bargains with 18 different unions. *Id.* at 57-62.

62. See WELLINGTON & WINTER, *supra* note 2, at 98-102.

Public Employee Bargaining: A Political Perspective

to control.⁶³ But bargaining with a dozen, or even more, separate units ought not be beyond the capacity of a city government.⁶⁴

Confronted with multiple bargaining units, the public employer can exercise control over bargaining only by establishing some guidelines, at least as to the size of the wage package, and limiting deviations from that guideline. In practice, one negotiation and agreement will establish a pattern to which most other agreements will be required to conform, with only limited deviations.⁶⁵ The pattern will control not only the wage package but also such work load terms as holidays, vacations, sick leave, and length of work week. Thus one union effectively bargains for the size of the wage package and common work load terms. The other unions are limited largely to bargaining over how the available wage dollars are to be allocated among pensions, insurance, and take-home pay. Each union, however, retains the ability to bargain concerning the conditions that are unique or of special interest to the employees it represents.

Pattern bargaining leads to practices which run counter to legal rules developed in the private sector as to what constitutes good faith bargaining, particularly when the pattern-setting agreement is not the first one negotiated. The public employer's refusal to settle with other unions until it has settled with the pattern-setting unit would be, according to traditional notions, bad faith bargaining.⁶⁶ When the employer makes offers to other unions, they will want assurances that, if the pattern settlement is more favorable, they will receive equal benefits. The pattern-setting union may then object that it is being required to bargain for employees not in the unit, contrary to traditional notions of good faith bargaining.

Because public employee bargaining differs significantly from pri-

63. New York City has so many agreements to negotiate that they are concluded at different times of the year. As a result, "it is virtually impossible to budget realistically for bargaining settlements. Bargaining and budgeting have become two very separate operations." STANLEY, *supra* note 21, at 117.

64. A degree of fragmentation is nearly impossible to avoid but some cities are able to hold it to a minimum. For example, excluding school employees, Philadelphia has only three units: policemen, firemen, and all others. See Rock, *supra* note 60, at 1007. Under normal circumstances, however, certain professional groups, such as doctors, nurses, social workers, and engineers, may make out compelling cases for separate representation: Division between blue collar and white collar employees may be difficult to deny. Schools will account for at least two additional units—teachers and others. As a result, a city of any size will be fortunate to have fewer than 10 units, counting school employees.

65. Agreements with policemen and firemen often follow a pattern which deviates substantially from the general pattern. Teachers have an almost wholly independent pattern, both in terms of percentage wage increases and other benefits.

66. See *U.M.W.A. v. Pennington*, 381 U.S. 657, 666-67 (1965); *AFL-CIO Joint Negotiating Comm. for Phelps Dodge*, 184 N.L.R.B. 106 (1970); *F.W. Woolworth Co.*, 179 N.L.R.B. 748 (1969).

vate bargaining, the legal rules from the private sector cannot be imported uncritically into the public sector. The principle of "equal treatment" virtually ensures that every visible increase granted one group will be translated into a general increase. Since the latter is the significant figure for budgetary purposes, some technique such as pattern bargaining must be devised to correlate an increase granted one group with its ultimate budgetary cost. Multiple bargaining units thus may require the public employer to establish and follow a pattern in bargaining. Pattern bargaining means, in effect, that one union will bargain for all those bound by the pattern. It should not be considered bad faith for the parties to bargain in accord with these political and economic realities.

If the pattern-setting union which bears the burden of bargaining or the unions which are bound by the pattern find the practice burdensome or oppressive, they can form a bargaining coalition to negotiate together those terms determined by the pattern and to bargain separately for those terms which fall outside the pattern.⁶⁷ Such two-level bargaining seems to serve the best interests of both the employees and the public employer, for it enhances integration of decisionmaking where necessary and permits diversity where desirable.

C. *Subjects for Bargaining*

Collective bargaining in the public sector, from the perspective of this inquiry, is a specially structured political process for making certain governmental decisions. The primary justification for this special process is that it gives the employees increased political effectiveness to help balance the massed political resistance of taxpayers and users of public services. One consequence of public employee bargaining is at least partial preclusion of public discussion of those subjects being bargained. And the effect of an agreement is to foreclose any change in matters agreed upon during the term of the agreement.⁶⁸ Because it constitutes something of a derogation

67. See Rock, *supra* note 60, at 1014-16.

68. The question whether a collective agreement should prevail over a conflicting ordinance presents, at the first level, no difficult conceptual problem. Collective bargaining is a procedure for making government decisions; the collective agreement is a legal enactment. If a state statute prescribes that a city should follow certain procedures in regulating certain subjects, then the city cannot validly follow a different procedure. If the collective bargaining statute provides that, when a majority of employees has selected a representative, the city shall regulate certain subjects through bargaining, the city cannot supersede that procedure by the unilateral acts of the chief executive, the legislature, or even a referendum. See *Detroit Police Officers Ass'n v. Detroit*, 41 Mich. App. 723, 200 N.W.2d 722 (1972). The city can no more establish or change wages and hours without collective bargaining than it can enact a zoning ordinance

Public Employee Bargaining: A Political Perspective

from traditional democratic principles, collective bargaining should be limited to those areas in which public employees do indeed encounter massed resistance. In other areas, disputes by public employees should be resolved through the customary channels of political decisionmaking.

Borrowing concepts of bargainable subjects from the private sector can be misleading for two reasons. First, in the private sector collective bargaining is the only instrument through which employees can have any effective voice in determining the terms and conditions of employment. One purpose of the duty to bargain is to provide employees a measure of industrial democracy; that duty, therefore, appropriately extends to all subjects which directly relate to their employment. In the public sector employees already have, as citizens, a voice in decisionmaking through customary political channels. The purpose of collective bargaining is to give them, as employees, a larger voice than the ordinary citizen. Therefore, the duty to bargain should extend only to those decisions where that larger voice is appropriate.

Second, in defining bargainable subjects in the private sector, the government is establishing boundaries for the dealings between private parties. In the public sector, however, government is establishing structures and procedures for making its own decisions. In the private sector the parties may agree at the bargaining table to expand the subjects of bargaining, but a public employee union and a public official do not have the same freedom to agree that certain decisions should be removed from the ordinary political processes and be decided by them in a special forum. The private employer's prerogatives are his to share as he sees fit, but the citizen's right to participate in governmental decisions cannot be bargained away by any public official.⁶⁹

without a public hearing and recommendation of the zoning board, where that is required by statute. Analytically, the question of what procedure the legislature contemplated should have dominance in regulating the particular subject matter. See generally Blair, *State Legislative Control Over the Conditions of Public Employment: Defining the Scope of Collective Bargaining for State and Municipal Employees*, 26 VAND. L. REV. 1 (1973).

69. A third difference, which is applicable in most public employee bargaining, is that the strike is not available to resolve disputes over bargainable subjects. In the private sector unions can strike to support demands on mandatory subjects, but cannot strike to support demands on nonmandatory subjects. See *N.L.R.B. v. Wooster Div. of Borg-Warner*, 356 U.S. 342 (1958). One of the considerations to be used in drawing the line between mandatory and nonmandatory subjects is the appropriateness of submitting the subject to the arbiter of economic force. In the public sector where the strike is prohibited entirely this consideration is absent. To the extent that strikes are legalized in the public sector, then the subjects for which the union can strike should be limited to those for which the use of the strike as a political pressure

In legal terms the principal question in the private sector is what the *mandatory* subjects of bargaining are, *i.e.*, what decisions the employer *must* share with his employees. The principal question in the public sector is what the *permissible* subjects of bargaining are, *i.e.*, what decisions *may* be made through the specially structured political process.⁷⁰

The special political structure and procedure of collective bargaining is particularly appropriate for decisions where the employees' interests in increased wages and reduced work load run counter to the combined interests of taxpayers and users of public services. Therefore, decisions as to wages, insurance, pensions, sick leave, length of work week, overtime pay, vacations, and holidays should be considered proper subjects for bargaining.⁷¹ Collective bargaining, however, lacks the same claim of appropriateness for decisions where budgetary or level of service considerations are not dominant and where the political alignment of taxpayers and users against employees does not occur.

For example, a decision concerning the content of the school curriculum does not centrally involve salary levels or work loads of teachers on the one hand, or the size of the budget or the level of service on the other. Rather, the decision requires a choice of the kinds of services to be provided within the limitations of the funds available.⁷² On such an issue there is no reason to assume that the

device is appropriate. The union might, therefore, not be allowed to strike for some objectives for which it would be allowed to bargain without recourse to the strike. However, none of the statutes allowing public employees even a limited right to strike has drawn this distinction.

70. In the public sector the validity of a provision in a contract depends upon whether it concerns a proper subject of collective bargaining. *See* Board of Educ. v. Associated Teachers, 30 N.Y.2d 122, 282 N.E.2d 109, 331 N.Y.S.2d 17 (1972); Koretz & Rabin, *Labor Relations Law*, 24 SYR. L. REV. 139 (1973).

71. The duty to bargain on a subject does not require the public employer to surrender flexibility by writing a rigid rule into the agreement. As in the private sector, the public employer can bargain for a flexible rule or even for full discretion in regulating the subject during the contract period. *See* N.L.R.B. v. American Nat'l Ins. Co., 343 U.S. 395 (1952).

72. Collective bargaining on such matters as the content of the curriculum, the number of speech therapists, the choice of textbooks, and grading standards has been justified on the ground that teachers, as professionals, should have a greater voice in these decisions than politically sensitive lay boards of education and bureaucratic minded administrators, and that bargaining insulates decisionmaking from the pressures of the unenlightened populace. *See* Wollett, *The Coming Revolution in Public School Management*, 67 MICH. L. REV. 1017 (1969). The assumption is that on all of these matters professional judgments should prevail over public choice. This assumption may be subject to question on several levels. *See* Goldstein, *supra* note 4. Undoubtedly, there are decisions which should be left to professional judgment, but submitting them to collective bargaining is a clumsy, inadequate, and even dangerous way of achieving that. Bargaining is a political process responding to political forces and leaves teachers vulnerable on some matters which should be beyond reach of local majorities.

Public Employee Bargaining: A Political Perspective

teachers' views can be summarized by a single voice, nor is there reason to believe that taxpayers, parents, or users of other services have any unified position. Two-sided bargaining on such issues misrepresents both the range of views and the alignment of interests which should be considered in making the decision.

Furthermore, channeling discussion into closed bargaining sessions inhibits a full airing of viewpoints, for it precludes equal consideration of differing professional judgments of teachers and of differing judgments and concerns of parents, students, and other interested citizens. Even if all of these views are presented at the bargaining table, the decision is made by public representatives whose primary charge is to protect the public purse. Thus the decision is not made solely on the merits of the issue, but as part of a package which results from trading off unrelated items. Because of its structure and function, collective bargaining does not provide an appropriate political process for making such decisions.

To say that curriculum content is not a proper subject of bargaining does not mean that teachers have no legitimate interest in that subject or that they should not participate in curriculum decisions. It means only that the bargaining table is the wrong forum and the collective agreement is the wrong instrument. Because of the teachers' special interests and competence, the school board can properly be authorized, or even required, to consult with them before making a decision. But no organization should purport to act as an exclusive representative; the discussions should not be closed; and the decision should not be bargained for or solidified as an agreement. In addition, all of the ordinary political processes should remain open for individuals or groups of teachers to make their views known to the politically responsible officials and thus to influence the decision.⁷³

This analysis, which restricts collective bargaining to subjects that substantially implicate budgetary issues, provides some guide for separating bargainable and nonbargainable subjects in the public sector. Yet it cannot provide a clear boundary line.

If teachers demand reduction in class size or policemen demand

73. A wide variety of procedures can be developed to ensure that teachers participate in these decisions without depriving any interested group of an opportunity to be heard. Representatives of the union and other teacher groups can meet with the school board for full discussion of the problem. Committees can be elected by the affected teachers wholly outside the union framework. School faculties may discuss and make recommendations. And school boards can hold open public meetings at which teachers and their various spokesmen may present their views just as spokesmen for parents, students, and other groups do.

minimum manning of patrols, the interests of the employees may coincide with the interests of users of the particular service; the clear confrontation created by wage demands does not then exist. However, there remains the opposition of taxpayers and users of other services. Granting the union demands would almost certainly require increased appropriations for the schools or the police department. Even some parents may prefer that any increase in the school budget be spent to improve other aspects of the educational program. The configuration of political interest groups remains sufficiently similar to make the collective bargaining structure appropriate for resolving such issues.

Collective bargaining might initially seem inappropriate for subjects such as seniority, promotions, work assignments, and discipline, which do not directly affect budget allocation. But union demands on these subjects are commonly resisted on the grounds that they reduce efficiency and efficiency is an interest shared by both taxpayers and users of public services.

If the union's demands do not in fact affect efficiency, then the dispute is simply one between the employees in the bargaining unit and their supervisors, department heads, or personnel department. Such disputes do not involve the public's interest but rather concern the relative roles of opposing interest groups within the government in determining the terms and conditions of employment. These competing interests are represented at the two-sided bargaining table; the proper parties are on each side of the table. The structure and procedure seem quite appropriate for reconciling their interests and working out the rules to govern their relationships.

Demands by policemen for disciplinary procedures which effectively foreclose use of a public review board further illustrate the need to examine each subject to determine whether it should be decided within the special political process of collective bargaining. In making such a demand the union probably represents the consensus of the employees and can thus properly speak with a single voice. However, such a demand has no identifiable budget cost; those interested in more police protection are more likely to support than oppose the demand. Hence there is not the combined opposition which typified resolution of budgetary and level of service issues. Nor is there the opposition of supervisors which characterizes internal management and personnel issues, for the chief of police and the police commissioners who sit on the employer's side of the bargaining table find the prospect of a public review board equally

Public Employee Bargaining: A Political Perspective

frightening. Those who favor a public review board are those who fear that policemen will act abusively or unlawfully and that their superiors will not take appropriate disciplinary action. The interests of this group are not represented at the bargaining table. Collective bargaining thus does not provide an appropriate political process for full discussion of the issue or for weighing and reconciling the competing interests.

Again, the conclusion that this subject should be nonbargainable does not mean that policemen have no legitimate interest in whether their conduct should be subject to public review. They certainly have a right to participate in that decision, but only through the ordinary avenues of the political process which are equally open to all competing views and interest groups.

D. *Public Information and Discussion of Negotiations*

Collective bargaining in the public sector is an integral part of the political process, a procedure for reaching a political decision. Once agreement is reached at the bargaining table, many of the issues are largely foreclosed; a heavy presumption arises against rejection of the agreement, even on budgetary grounds. The political officials can be held responsible at the polls, but without some knowledge of the positions of the parties at the bargaining table the voter is handicapped in making a judgment. For the political process to be responsive and reliable, members of the public need to know the issues being negotiated and have an opportunity to make their views known before agreement is reached.

This proposition seems, at first glance, to run counter to the customary wisdom drawn from the private sector—that negotiations are best conducted in private. But moderate publicity need not disrupt the bargaining process. The public's need to know and to be able to make its views known does not require that public employee bargaining be conducted in a goldfish bowl.⁷⁴ Indeed, it does not require anything substantially different on the public employer's side than is widely accepted on the employees' side in both the

74. "Right to Know" or "Sunshine" laws have been held not to require that negotiations be held in public. It is enough that (1) the negotiator, after having reached a tentative agreement, makes his report in a public meeting where there is full opportunity for airing of views, and (2) the recommendations are voted on in public. See *Bassett v. Braddock*, 262 So. 2d 425 (Fla. 1972); Edwards, *supra* note 3, at 902; cf. *Town of Stratford*, BNA 1972 Gov't EMPLOYEE REL. REP. No. 461, at B-1 (Conn. L.R.B. 1972); *City of Salem*, BNA 1973 Gov't EMPLOYEE REL. REP. No. 485, at B-5 (Mass. L.R.B. 1973).

public and private sector. Union members regularly recommend demands to be made in negotiations and normally vote on the union's proposals. During bargaining the union committee commonly reports to the members on the course of negotiation and often obtains further guidance, either formally or informally, as to which demands should have priority and which should be compromised. When a tentative agreement is reached, it is reported back to the members for vote. The outcome of that vote depends greatly on the effectiveness of communication between the union members and the negotiating committee during the course of negotiations. There would seem to be no compelling reason why members of the public ought not be kept as fully informed about what their representatives are doing. Collective bargaining can surely be democratized on both sides of the bargaining table.⁷⁵

A closely related problem arises when a minority union attempts to present its views concerning negotiations. For example, if a minority teachers' representative appears at a public meeting of the school board to protest an agency shop clause proposed by the majority union, should it be considered a violation of the duty to bargain exclusively with the majority union for the board to listen to the minority union's protest?⁷⁶ The principle of exclusive representation prohibits an employer from bargaining with any employee representative other than the majority union. In the private sector even listening to the minority representative might be viewed as undermining the majority union's status. But public sector bargaining is part of the governmental process and the responsible political officials are entitled, if not obligated, to listen to the views of all those who have an interest in the decision. Listening to the

75. Proposals have been made that proposed collective agreements be submitted to public referendum. See WELLINGTON & WINTER, *supra* note 2, at 200-01; Nigro, *Collective Bargaining: A Reappraisal*, 32 PUB. AD. REV. 120 (1972). Such proposals overlook the practical problem of voting on three to 30 contracts each year and the more serious consequence of disintegrating decisionmaking on the employer side. It is a bit much to expect every voter to evaluate every agreement separately. In many school districts and some cities the voter already has a general veto because of the necessity to get approval of the tax rate by referendum. He ought not to be expected to vote on more fragmented issues.

76. The Wisconsin Employment Relations Board held that it would. *Madison Teachers, Inc. v. Joint School Dist. No. 8*, BNA 1972 GOV'T EMPLOYEE REL. REP. NO. 482, at B-3 (Wis. E.R.B. 1972). This was after the Board's ruling that refusal by the school board to let the minority representative speak would be a violation of employee rights under the statute had been reversed by the Wisconsin Supreme Court. That court held that to allow the minority representative to speak would constitute negotiation with the minority union in violation of the statute. *Milwaukee Teachers Local 252 v. Wisconsin Employment Relations Comm'n*, 42 Wis. 2d 637, 168 N.W.2d 92 (1969). See Note, *The Privilege of Exclusive Recognition and Minority Union Rights in Public Employment*, 55 CORNELL L. REV. 1004 (1970).

Public Employee Bargaining: A Political Perspective

views of the spokesman for a group of employees does not constitute bargaining, for it gives that spokesman no different status or access to the political process than any other citizen. It does not reduce the advantages which the majority union obtains by access to the special structure and procedure of collective bargaining.⁷⁷ At most, it reduces the majority union's ability to conceal the fact that the employees do not unanimously support its position on every demand.

Exclusive recognition has never, in law or in fact, guaranteed the majority union any such right to conceal. The establishment of collective bargaining in the public sector, as a method of governmental decisionmaking should certainly not have the effect of obstructing public disclosure of facts and views relevant to the political decision to be made.

Conclusion

The purpose of this article has been to articulate the premise that public employee bargaining is a method of governmental decision-making and should therefore be viewed as an integral part of the political process. In order to elaborate that premise and to explore some of its implications, it has been necessary to oversimplify the political process and the pressures which produce a decision. This is particularly true of the budget-making process, which is functionally the most important policy-making process of local government, but which is largely disguised as a colorless accounting exercise.

Because the purpose here has been to present a framework which might provide a different perspective, rather than to undertake a precise analysis resulting in exact answers, the premise has been elaborated and extended with deliberate single-mindedness. Other considerations which might qualify this premise have, for the moment, been pushed aside so as to make plain some of the projections of the political perspective. Only in this way can we determine whether the political perspective can be useful in helping us understand the problems of public employee bargaining.

However valid the political perspective may be, the view it offers is troubling, for it makes us see that the wages and working con-

77. The fundamental difference, both practically and legally, between collective bargaining and consulting or conferring has been emphasized by public employees, legislatures, courts, and legal scholars. See *Board of Educ. v. Scottsdale Educ. Ass'n*, 17 Ariz. App. 504, 498 P.2d 578 (1972), *vacated on other grounds*, 109 Ariz. 342, 509 P.2d 612 (1973); Edwards, *supra* note 3, at 895-99; Grodin, *Public Employee Bargaining in California: The Meyers-Willis-Brown Act in the Courts*, 23 HASTINGS L.J. 719 (1972).

ditions of public employees depend upon the play of political forces which are often influenced by random and irrelevant considerations. It forces us to perceive also that fair but not overly generous treatment for employees depends upon devising arrangements which achieve a rough balance of political forces. Because of the unpredictability of the political process, one would instinctively like to remove this decisionmaking from the political arena entirely, to have the decision made objectively on the basis of what is fair and reasonable.

But the only escape from the political process is to put the decision in the hands of someone who is not answerable to the employees, the taxpayers, or the users of public services. This may conceivably be done for limited groups of employees on limited occasions, but the authority to fix the terms of public employment and thus to bind the budget cannot be generally withdrawn from the political process. At most such "delegation" can rearrange the political forces or give control to a political process outside the local community. Indeed, when arbitration is in general use, there is merely a restructuring of decisionmaking with the crucial political decision being the selection of the arbitrator, based on his past performance. The arbitrator, however, is likely to be less responsible to his constituency because his defined role is to be objective and his award is disguised as nonpolitical.

The choice is not whether public employees' wages and other conditions of employment are to be decided through the political process, but how that process should be structured to make the decision. Collective bargaining provides a structure and procedure which generally reflects the political forces involved. It places across the bargaining table the representatives of opposing interest groups concerned with budget allocations. It provides a forum for rational discussion and accommodation of competing interests. The agreement reached provides a period of political stability on the issues settled. Overall, collective bargaining will more likely produce fair and responsible results than the other alternatives. The task is to construct not only collective bargaining but also the other governmental institutions and procedures so as to make them all fit together as an integrated political process.